

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re patent application of:

James A. HOFF

Serial No. 10/602,905

Filed June 24, 2003

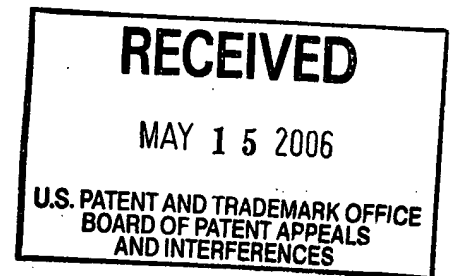
CLOSURE ASSEMBLY

)
) Before the Examiner
)
) James N. Smalley
)
) Group Art Unit 3727
)
) May 9, 2006
)

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APPELLANT'S REPLY BRIEF



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Appellant's Reply Brief
Serial No. 10/602,905
Applicant: James A. Hoff
Group Art Unit 3727
Atty Docket No. 1104-964/RKE-075

I. INTRODUCTORY COMMENTS

This Reply Brief is being filed pursuant to 37 CFR 41.41. The Examiner's Answer was dated April 20, 2006. Accordingly, the Reply Brief is being filed within two (2) months of the Examiner's Answer. Please charge any fees that are required to Deposit Account No. 23-3030.

II. STATUS OF CLAIMS

The claims on appeal include claims 1, 2, 3, 4, 5, 7, 8, 9, 13, 14, 15, 16, and 17.

The status of all claims in the subject patent application is set forth below.

Claim No.	Current Status
1	Pending
2	Pending
3	Pending
4	Pending
5	Pending
6	Canceled
7	Pending
8	Pending
9	Pending
10	Canceled
11	Canceled
12	Canceled
13	Pending
14	Pending
15	Pending
16	Pending
17	Pending
18	Canceled
19	Canceled
20	Canceled
21	Canceled
22	Canceled
23	Canceled
24	Canceled
25	Canceled
26	Canceled
27	Canceled
28	Canceled

III. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Whether Claims 1, 8 and 9 are unpatentable under 35 U.S.C. §102(b) over Bradshaw et al. (U.S. Patent No. 4,105,135) in reference to Baughman (U.S. Patent No. 5,680,953).**
- B. Whether Claims 2, 3, 4, 5, and 7 are unpatentable under 35 U.S.C. §103(a) over Bradshaw et al. (U.S. Patent No. 4,105,135).**
- C. Whether Claim 13 is unpatentable under 35 U.S.C. §103(a) over Baughman (U.S. Patent No. 5,680,953).**
- D. Whether Claims 13, 14, 15, 16, and 17 are unpatentable under 35 U.S.C. §103(a) over Ziegler et al. U.S. Patent No. 4,124,140) in view of Bradshaw et al. (U.S. Patent No. 4,105,135).**

IV. ARGUMENT

A. First Grounds

Claim 1

Appellant stands behind and reasserts all of the explanations and arguments that are set forth in its Appeal Brief. Nothing the Examiner has stated in his Answer changes or lessens the effect and strength of those earlier explanations and arguments. There are though two portions of the Examiner's Answer regarding claim 1 that deserve additional comments from Appellant at this time.

The first portion is directed to the contention that the Bradshaw et al. structure is "capable of performing in the intended manner". Claim 1 is rejected under 35 U.S.C. §102(b) and we have to take the disclosed structure of Bradshaw et al. as is, without the benefit of any hindsight modifications or alterations. This means that the illustrated form of the Bradshaw et al. plug (1) is as depicted in FIG. 4. The Bradshaw et al. reference does not disclose or suggest any modifications that would alter that particular illustration in terms of the relative sizes, ratios, and locations for the various features.

In the container closure art involving the anchoring of a flange or fitting into a raised opening of a drum end, those of ordinary skill in the art are quite familiar with the designations of "Type I" and "Type II" flanges or fittings that have been used over the years. Historically, the metal drum industry has typically specified these two standard flange styles. These two standard flange styles are generally known as a Type I flange and a Type II flange. The Type I flange has an octagonal base and a raised cylindrical

body that is internally threaded. The Type II flange has an upper serrated lip and depending therefrom a cylindrical body that is internally threaded.

The described Type I fitting has been associated with the "TRI-SURE" brand of American Flange and is configured similar to that illustrated in the Bradshaw et al. patent. The described Type II flange has been associated with the "VISEGRIP" brand of Rieke Corporation and is configured similar to that illustrated in the subject patent application. An expanded discussion of these two flange types is found in U.S. Patent No. 6,418,608, for example.

As is clear from Bradshaw et al., the closing plug is not capable of providing any type of abutment against the drum end material of a Type I flange. The required modifications to the Bradshaw et al. plug go well beyond what anyone would consider to be obvious. The impossibility of making such modifications while trying to maintain the overall design theory and intent, according to Bradshaw et al., has already been covered in Applicant's Appeal Brief. If an attempt is made to try and use the Bradshaw et al. plug on a Type II flange, such as that disclosed in Appellant's patent application, it should be clear from the dimensions and axial height ratios what would happen. The lowest edge of the scallops (8) would contact the drum end upper surface long before any type of meaningful threaded engagement could be achieved. No one of ordinary skill in the art would ever want to achieve abutment to stop threaded advancement until sufficient threads are engaged to meet D.O.T. requirements.

The second portion or issue to be addressed with regard to claim 1 concerns the meaning or definition of "flange". While the Examiner may be of the opinion that the specification does not provide a clear and concise definition for the term "flange",

Appellant disagrees. First, the information provided regarding the “flange” is sufficient for even a lay person to clearly understand the structure of the flange and how it is assembled to the drum end and how it is used. However, the proper standard is with respect to a person of ordinary skill in the art. A person of ordinary skill requires less than a lay person and since the style of flange is well known within this art, substantially less than what has been provided in the specification would still be sufficient to enable a person of ordinary skill in the art to understand the definition of the disclosed “flange”.

Please consider the following portions of the specification in support of Appellant’s position: page 1, lines 14-17; page 1, lines 33-37; page 2, lines 1-8; and page 7, lines 12-18, as well as drawing figures 1 and 2.

Claims 8 and 9

The Examiner chooses to define a line as a surface by arguing at the molecular level. Applicant has already made its point on this issue in its Appeal Brief. The position now taken by the Examiner and focusing only on his own words should be convincing that Appellant’s position on this issue is correct. People interpret the term “surface” in its normal everyday, general context as having two dimensions and the term “line” in its normal and everyday context as having one dimension. Common usage by those of ordinary skill in the art would not treat a “line” as being a “surface”, notwithstanding the Examiner’s molecular theory.

B. Second Grounds

Claims 2, 3, 4, and 5

Appellant believes that the explanations and arguments submitted in its Appeal Brief adequately and fully address this rejection. The remarks by the Examiner in his Answer are a mere restatement of the rejection and nothing more is believed to be necessary to support the patentability of claims 2-5 and 7.

C. Third Grounds

Claim 13

Appellant disagrees that claim 13 is a product by process claim. Appellant also disagrees with the Examiner's simplification of the resulting combination and the D.O.T. standards that must be met. There is no indication that the Type I and Type II flanges would ever be approved if the metal flanges were changed to plastic and molded as a part of the drum end. Of course this would require changing the drum end from metal to plastic. It should be clear that the Examiner has stretched the envelope in terms of creativity to formulate this further explanation of the claim rejection.

D. Fourth Grounds

Claims 13, 15 and 16

Appellant believes that the explanations and arguments submitted in its Appeal Brief adequately and fully address this rejection. The remarks by the Examiner are a mere restatement of his original rejection and nothing more is believed to be necessary to support the patentability of claims 13, 14, 15, 16 and 17.

Respectfully submitted,

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		First Named Inventor	James A. HOFF
		Group Art Unit	3727
		Examiner Name	James N. Smalley
Total Number of Pages in this Submission	10	Attorney Docket Number	1104-964/RKE-075

ENCLOSURES (check all that apply)		
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